TRANSMITTAL OF APPEAL BRIEF

Docket No. 291508006US1

In re Application of: Schipunov et al.

Application No.	Filing Date	Examiner	Group Art Unit
09/702,004-Conf. #7812	October 30, 2000	D. Lastra	3622

Invention: TARGETING ELECTRONIC ADVERTISING PLACEMENT IN ACCORDANCE WITH AN ANALYSIS OF USER INCLINATION AND AFFINITY

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: May 2, 2005 .

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Dated: June 29, 2005

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Dated: June 29, 2005 Signature: (Sandy Reisman)

Docket No.: 291508006US1 (PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Vladimir V. Schipunov et al.

Application No.:	09/702,004	Conf. No.:	7812
Filed:	October 30, 2000	Art Unit:	3622
For:	TARGETING ELECTRONIC ADVERTISING PLACEMENT IN ACCORDANCE WITH AN ANALYSIS OF USER INCLINATION AND AFFINITY	Examiner:	D. Lastra

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This brief is in furtherance of the Notice of Appeal filed in this case on May 2, 2005. The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

I. REAL PARTY IN INTEREST

The rights of the inventors in this application were originally assigned to Avenue A, Inc., of Seattle, Washington, as recorded at reel 011929, frame 0857. Avenue A, Inc. subsequently assigned its rights in this application to aQuantive, Inc., of Seattle, Washington, as recorded at reel 014831, frame 0380.

II. RELATED APPEALS AND INTERFERENCES

Neither Appellants, Appellants' legal representative, nor the above-identified Assignee are aware of other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

III. STATUS OF CLAIMS

Claims 1-51 have been presented, are presently pending, and stand twice rejected.[1]

The Examiner rejected claims 22-24 and 34 under 35 U.S.C. § 101 as non-functional descriptive material.

The Examiner rejected claims 1-41 and 44-47 under 35 U.S.C. § 103(a) over U.S. Patent No. 6,487,538 to Gupta et al. ("Gupta") in view of U.S. Patent No. 5,960,409 to Wexler ("Wexler").

The Examiner rejected claims 42, 43 and 48-51 under 35 U.S.C. § 103(a) over Gupta in view of Wexler and U.S. Patent No. 6,708,335 to Ozer et al. ("Ozer").

Appellants hereby appeal the rejection of claims 1-51.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the second Office Action dated November 3, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The rejected claims are directed to techniques for selecting a publisher's web site that is likely to produce good results for a particular advertiser if the advertiser places advertising there. In some cases, the techniques evaluate candidate publishers based on

[1] The claims are shown in Appendix A.

the assessments of their inclination and/or affinity. Both inclination and affinity have to do with the extent to which two web sites are both visited by the same users. Inclination measures the extent to which users that visit the advertiser's web site also visit a candidate publisher's web site. Affinity measures the extent to which users that visit a publisher web site on which the advertiser conducted a successful advertising campaign in the past also visit a candidate publisher web site.

In at least one embodiment, a software facility assesses, for a selected electronic advertiser having a web site and each of a plurality of electronic publishers each also having a web site, a measure of the desirability of placing with the electronic publisher one or more advertising messages for the selected electronic advertiser (See specification, page 1, line 32-page 2, line 10) by, for each of a plurality of users, storing a user identifier on a computer system used by the user. When one of the plurality of users visits the electronic advertiser website, the facility receives and stores an indication of a first type indicating that the user visited the electronic advertiser website, where the indication contains the user identifier stored on the computer system used by the user. When one of the plurality of users visits the website of one of the plurality of electronic publishers, the facility receives and stores an indication of a second type indicating that the user visited the electronic publisher website, where the indication contains the user identifier stored on the computer system used by the user and an identifier of the electronic publisher. (See specification, page 3, lines 14-27.) The facility then selects the user identifiers contained in stored indications of the first type; determines the number of unique selected user identifiers; for each of the electronic publishers, determines the number of selected user identifiers that are contained in at least one indication of the second type that also contains an identifier of the electronic publisher to obtain a count for the electronic publisher; divides the count for the electronic publisher by the number of unique selected user identifiers to obtain an inclination metric for the electronic publisher; analyzes the inclination metrics obtained for the electronic publishers; and selects one or more of the electronic publishers

on which to place an advertising message for the advertiser based upon the analysis. (See specification, page 4, line 5-page 5, line 15.)

In at least one embodiment, a software facility assesses, for a selected advertiser and each of a plurality of candidate advertising outlets, a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser. For each of the plurality of candidate advertising outlets, the software facility identifies a plurality of users that have visited the candidate advertising outlet; counts the number of identified users that have also visited the selected advertiser; and generates for the candidate advertising outlet a metric that compares the number of identified users to the number of counted users and constitutes a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser. (See specification, page 4, line 5-page 5, line 15.)

In at least one embodiment, one or more computer memories collectively contain an advertising outlet inclination data structure, which contains information indicating, for a selected advertiser having a web page and each of a plurality of candidate advertising outlets, the fraction of visitors to the web page of the selected advertiser that also visited the candidate advertising outlet, where the contents of the data structure are usable to select a candidate advertising outlet on which to place an advertising message for the selected advertiser. (See specification, page 4, line 5-page 5, line 15.)

In at least one embodiment, one or more computer memories collectively contain an advertising outlet inclination data structure, which contains information indicating, for a selected advertiser having a web page and each of a plurality of candidate advertising outlets, the fraction of visitors to the web page of the selected advertiser that both (a) visited the candidate advertising outlet, and (b) did not view an advertising message for the advertiser, where the contents of the data structure are usable to select a candidate advertising outlet on which to place an advertising message for the selected advertiser. (See specification, page 6, lines 1-19.)

In at least one embodiment, one or more computer memories collectively contain an advertising outlet inclination data structure, which contains information indicating, for a selected advertiser having a web page and each of a plurality of candidate advertising outlets, the fraction of visitors to the web page of the selected advertiser that also visited the candidate advertising outlet before first viewing an advertising message for the advertiser, where the contents of the data structure are usable to select a candidate advertising outlet on which to place an advertising message for the selected advertiser. (See specification, page 6, lines 1-19.)

In at least one embodiment, a software facility assesses, for a selected electronic advertiser and each of a plurality of candidate electronic publishers each having a website, a measure of the desirability of placing with the candidate electronic publisher one or more advertising messages for the selected candidate electronic advertiser. (See specification, page 1, line 32-page 2, line 10.) The facility selects a distinguished electronic publisher having a website and that produced favorable results when an advertising message for the selected electronic advertiser was earlier placed on the distinguished electronic publisher. (See specification, page 8, lines 12-17.) For each of a plurality of users, the facility stores a user identifier on a computer system used by the user, where the number of stored user identifiers constituting a first quantity. (See specification, page 3, lines 18-27.) When one of the plurality of users visits the distinguished electronic publisher advertiser website, the facility receives and stores an indication of a first type indicating that the user visited the distinguished electronic publisher website, where the indication contains the user identifier stored on the computer system used by the user. When one of the plurality of users visits the website of one of the plurality of candidate electronic publishers, the facility receives and stores an indication of a second type indicating that the user visited the candidate electronic publisher website, where the indication contains the user identifier stored on the computer system used by the user and an identifier of the candidate electronic publisher. (See specification, page 3, lines 14-27.) The facility then selects the user identifiers contained in stored indications of the first type; determines the number of unique selected

user identifiers, which constitutes a second quantity; for each of the candidate electronic publishers, selects stored indications of the second type that contain an identifier of the candidate electronic publisher; determines the number of unique user identifiers that are contained in at least one of the selected indications of the second type, which constitutes a third quantity; determines the number of unique user identifiers that are contained in at least one of the selected indications of the second type that are also selected, which constitutes a fourth quantity; divides the product of the first and third quantities by the product of the second and fourth quantities to obtain an affinity metric for the candidate electronic publisher; analyzes the affinity metrics obtained for the candidate electronic publishers; and selects one or more of the candidate electronic publishers on which to place an advertising message for the advertiser based upon the analysis. (See specification, page 9, line 20-page 10, line 26.)

In at least one embodiment, a software facility assesses, for a selected advertiser and each of a plurality of candidate advertising outlets, a measure of the desirability of placing with the candidate advertising outlet an advertising messages for the selected advertiser. For each of the plurality of candidate advertising outlets, the facility identifies a distinguished advertising outlet as likely to produce a good result when an advertising message for the selected advertiser is place on the distinguished advertising outlet. For each of the candidate advertising outlets, the facility measures the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet to obtain an affinity metric for the candidate advertising outlets. Based upon an analysis of the affinity metrics obtained for the candidate advertising outlets, the facility selects one or more candidate advertising outlets on which to place an advertising message for the selected advertiser. (See specification, page 9, line 20-page 10, line 26.)

In at least one embodiment, one or more computer memories collectively contain an advertising outlet affinity data structure relating to a selected advertiser and a selected advertising outlet on which an advertising message for the selected advertiser has been successfully placed. The affinity data structure contains information indicating, for each of

a plurality of candidate advertising outlets, the extent to which visitors to the selected advertising outlet also visited the candidate advertising outlet, where the contents of the data structure are usable to select one or more of the candidate advertising outlet on which to place an advertising message for the selected advertiser. (See specification, page 9, line 20-page 10, line 26.)

In at least one embodiment, a software facility selects advertising outlets on which to place advertising messages for an advertiser. For each of a first plurality of advertising outlets, the facility assesses the rate at which visitors to the advertiser also visit the advertising outlet, and selects an advertising outlet among the first plurality having the highest rate. (See specification, page 4, line 5-page 5, line 15.) For each of a second plurality of advertising outlets, the facility assesses the tendency of a high-performing advertising outlet to drive its visitors to the advertising outlet among the second plurality of advertising outlets, and selects an advertising outlet among the second plurality of advertising outlets to which the high-performing advertising outlet has the greatest tendency to drive its visitors. (See specification, page 9, line 20-page 10, line 26.)

In at least one embodiment, a software facility selects advertising outlets at which to advertise on behalf of an advertiser. For each of a plurality of advertising outlets, the facility determines a first number of consumers observed to visit the advertising outlet and, of the number of different consumers observed to visit the advertising outlet, determines a second number of consumers that also visited the advertiser. For each advertising outlet, the facility divides the second value by the first value to obtain an inclination value; and selects advertising outlets at which to advertise on behalf of the advertiser based on the inclination values of the advertising outlets. (See specification, page 4, line 5-page 5, line 15.)

In at least one embodiment, a software facility selects advertising outlets at which to advertise on behalf of an advertiser. For each of a plurality of advertising outlets, the facility determines a first number of consumers observed to visit the advertising outlet and,

of the number of different consumers observed to visit the advertising outlet, determines a second number of consumers that (a) also visited the advertiser, and (b) were not observed to receive an advertising message for the advertiser. For each advertising outlet, the facility divides the second value by the first value to obtain an inclination value, and selects advertising outlets at which to advertise on behalf of the advertiser based on the inclination values of the advertising outlets. (See specification, page 6, lines 1-19.)

In this manner, the embodiments of Appellants' techniques target electronic advertising placement in accordance with an analysis of user inclination and/or affinity.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Is the rejection of claims 22-24 and 34 under 35 U.S.C. § 101 proper?

B. Is the rejection of claims 1-41 and 44-47 under 35 U.S.C. § 103(a) over Gupta in view of Wexler proper?

C. Is the rejection of claims 42, 43 and 48-51 under 35 U.S.C. § 103(a) over Gupta in view of Wexler and Ozer proper?

VII. ARGUMENT

A. The Rejection of Claims 22-24 and 34 Under 35 U.S.C. § 101 Is Improper

1. NonFunctional Descriptive Material

The Manual of Patent Examining Procedure (MPEP) § 2106(IV)(B)(1)(a) provides:

> Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and

> other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

2. The Examiner Failed to Show that Claims 22-24 and 34 are Directed to NonFunctional Descriptive Material

In both a first Office Action dated March 30, 2004, and a second Office Action dated November 3, 2004, the Examiner rejected claims 22-24 and 34 under 35 U.S.C. § 101 as nonfunctional descriptive material. In rejecting the claims, the Examiner stated in both Office Actions that, "[t]he data structure described in claims 22-24 and 34 is simply data file – no functional change occurs when an application program uses the structural data." (first Office Action, page 2; second Office Action, page 2.)

The Examiner has failed to show that claims 22-24 and 34 are directed to nonfunctional descriptive material. Claims 22-24 each recite "an advertising outlet inclination data structure, . . . such that the contents of the data structure are usable to select a candidate advertising outlet on which to place an advertising message for the selected advertiser." Claim 34 recites "an advertising outlet affinity data structure . . . such that the contents of the data structure are usable to select one or more of the candidate advertising outlet on which to place an advertising message for the selected advertiser."

In the second Office Action, the Examiner responded to Appellants' amendments to claims 22-24 and 34, and arguments that the courts have found claims directed to data structures that impart functionality when encoded on a computer-readable medium to be statutory subject matter, with the following statement:

> Applicant *[sic]* amendment did not overcome the Section 101 rejection. The data is not performing the step of selecting a candidate advertising outlet on which to place advertising message for the selected advertiser.

(second Office Action, page 2.)

These statements do not satisfy the Examiner's burden of showing how claims 22-24 and 34 are nonfunctional descriptive material. Contrary to the Examiner's assertion, the data stored in the data structures of claims 22-24 and 34 enable the selection of a candidate advertising outlet and, thus, imparts functionality. Accordingly, the Examiner has failed to satisfy his burden with respect to these claims.

3. Claims 22-24 and 34 are Each Directed to Patentable Subject Matter as Required by 35 U.S.C. § 101

Claims 22-24 and 34 are each directed to a data structure stored on one or more computer memories that enables the selection of a candidate advertising outlet and, thus, imparts functionality. The courts have found such data structures that impart functionality when encoded on a computer-readable medium to be statutory subject matter. *See e.g.*, *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory); *In re Warmerdam*, 33 F.3d 1354, 1361, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994) (claim to computer having a specific data structure stored in memory held statutory product-by-process claim). A claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. MPEP § 2106(IV)(B)(1)(a).

B. The Rejection of Claims 1-41 and 44-47 Under 35 U.S.C. § 103(a) Over Gupta In View of Wexler Is Improper

1. Legal Requirements for Obviousness

35 U.S.C. § 103(a) provides:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

To reject claims as being obvious, "the examiner bears the initial burden of presenting a prima facie case of obviousness." In re Rijckaert, 9 F.3d 1531, 1532 (Fed. Cir. 1993). "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." Id. (quoting In re Bell, 991 F.2d 781, 782 (Fed. Cir. 1993)). The Examiner is not allowed to use hindsight gleaned from the invention itself to modify references. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1050-51 (Fed. Cir. 1988). Furthermore, "[t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." In re Fritch, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (emphasis added). The Federal Circuit emphasized this point by stating that:

> [a]lthough a prior art device could have been turned upside down, that did not make the modification obvious unless the prior art fairly suggested the desirability of turning the device upside down.

In re Chu, 66 F. 3d 262, 298 (Fed. Cir. 1995) (emphasis added).

2. Gupta

Gupta is directed to an approach for local advertising on the Internet. (col. 5, lines 66-67.) In Gupta, Internet Service Providers (ISPs) or proxies owned by an ISP insert advertisements that are transmitted from a web host to a client. Alternatively, any entity may insert or replace an advertisement that is transmitted to a client. By allowing the ISP to insert the advertisement, advertisements appear on small web sites that do not normally attract advertisers. (col. 6, lines 10-19.)

3. Wexler

Wexler is directed to an approach for providing on-line third party accounting and statistical information. (col. 2, lines 38-39.) In Wexler, banners that are published for the benefit of an advertiser and presented by a user's web browser point to or address a third-party accounting and statistical service. When the user clicks on a banner, the third-party accounting and statistical service receives the download request signal from the user's web browser. The third-party accounting and statistical service accumulates and tabulates statistical information including the number of clicks on the advertiser's banner, and data indicative of the effectiveness of the advertising medium. (col. 2, lines 40-61.)

4. The Examiner Failed to Establish a *Prima Facie* Case of Obviousness

In the first Office Action, the Examiner rejected claims 1-37 under 35 U.S.C. § 103(a) as being obvious over Gupta. In response, Appellants argued that, according to the Examiner's example provided as a basis for the rejections in the first Office Action, (1) Gupta would track and store click-through data, and use the click-through data to determine which publisher would do better than others in placing particular advertisements; (2) Gupta's click-through data is an indication of a "referral" from one web site to another in that a user at a first web site clicks-through to a second web site; and (3) Appellants' technique utilizes inclination data or affinity data, which is different than referral data, to determine the desirability of placing with an electronic publisher an advertising message

for an advertiser. In the second Office Action, the Examiner responded with the following statement:

> Applicant's arguments, filed on 07/29/04, with respect to the rejection(s) of claim(s) 1-37 under Gupta have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Wexler.

(second Office Action, page 21.)

Accordingly, in the second Office Action, the Examiner rejected claims 1-41 and 44-47 as being obvious over Gupta in view of Wexler. The Examiner has failed to establish a *prima facie* case for the obviousness rejection of claims 1-41 and 44-47 over Gupta in view of Wexler, in that the Examiner has failed to show how the teachings from Gupta and Wexler would have suggested the subject matter claimed in claims 1-41 and 44-47 to a person of ordinary skill in the art.

In initially rejecting claim 1, the Examiner stated in the first Office Action that:

> Gupta does not explicitly teach: dividing the count for the electronic publisher by the number of unique selected identifiers to obtain an inclination metric for the electronic publisher; analyzing the inclination metrics obtained for the electronic publishers; and selecting one or more of the electronic publishers on which to place an advertising message for the advertiser based upon the analysis.
>
> However, Gupta teaches that "advertising is increasingly utilized by owners of web sites (referred to as web hosts) as a revenue source and for the advertisers to gain publicity and web site access. Web hosts sell advertising space on their web site to distribute web pages including advertisements to Internet users. It is desirable for advertisers to target specific audiences and persons that may be interested in the specific good or service being advertised" (see column 6, lines 1-5). Also, Gupta teaches that "each and every user action is processed through the ISP or proxy of the ISP. Consequently, the ISP has the ability to maintain statistics on the user and the user's Internet viewing (referred to as user information or profile information). The ISP or proxy has the ability to maintain a user's profile consisting of demographic information, such as sites (URLs) the user has accessed and the amount of time spent on each and every web site (URL). . . All URL request, text, and other information is transmitted from the proxy and proxy copies this information and stores in a raw database" (see column 9,

> lines 10-51). Gupta also mentions that "by evaluating demographic and profile information as described, direct marketing advertisers and one-on-one advertisers may more accurately target specific individuals. Further, the ISP and other proxies benefits (by selling advertising space and utilizing its collected profile and other information, web server benefits (by selling more advertising space regardless of whether web server is small or large), *[sic]* advertiser benefits by accurate targeting (resulting in increase probability of a click-through), and client benefits by receiving advertisements that the client may be particular interested in. . . Another advertising scheme accesses cookies stored on individual's browsers to determine the types of web sites that have been accessed. When a web site is accessed, a cookie is sent by the web site identifying itself to the web browser. Also Gupta teaches that "payment schemes for online advertising vary. For example, an advertiser may pay based on the number of items different users access a web site (referred to as hits or page impressions). Alternatively, an advertiser may only pay if a user clicks on the advertiser's banner or icon and views the advertiser's web page (referred to as click-through). Further, a web host may also receive payment based on any completed transactions that results from a click-through (e.g., the web host receives a percentage of the payment received by the advertiser from the user) (referred to as a referral commissions)" (see column 4, lines 26-36). Furthermore, Gupta teaches that due to the increased overhead and low hit count for small web sites, advertisers are reluctant to advertise on the smaller web sites (see column 5, lines 48-53). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that a particular advertiser would use the Gupta system to collect, track and store user's on-line behavior and would use this stored data to determine how successful the placement of a particular advertisement in a particular Internet Publisher would be, in comparison of placing the same advertisement in a different Internet Publisher. For example, if a particular advertiser places a particular advertisement in Publisher A and in Publisher B, and if 100 visitors visit Publisher A and 100 visitors visit Publisher B. Then suppose, that 75 visitors click-through to the particular advertiser's website in Publisher A but only 5 visitors click-through to the advertiser's website in Publisher B. Then, it would be obvious by using simple mathematics, such as dividing one number by another, that Publisher A would rank higher than Publisher B, in placing that particular advertisement for that particular advertiser. Therefore, it would be obvious that Gupta would track and store the online activities of the users and would use this store data to determine which publisher would do better than others in placing particular advertisements.

(first Office Action, pages 4-6.)

In rejecting claim 1, the Examiner stated in the second office Action that:

> Gupta does not explicitly teach: dividing the count for the electronic publisher by the number of unique selected identifiers to obtain an inclination metric for the electronic publisher; analyzing the inclination metrics obtained for the electronic publishers; and selecting one or more of the electronic publishers on which to place an advertising message for the advertiser based upon the analysis.
>
> However, Wexler teaches that a third-party on-line accounting system that accumulates and tabulates statistical information including the number of clicks on the advertiser banner, and data indicative of the effectiveness of the banner-publisher frequently-visited Web site as an advertising medium (see column 2, lines 20-62; column 5, lines 24-30). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gupta would use the Wexler system to collect, track and store user's on-line behavior and would use this stored data to determine how successful the placement of a particular advertisement in a particular Internet Publisher would be, in comparison of placing the same advertisement in a different Internet Publisher, as taught by Wexler. For example, if a particular advertiser places a particular advertisement in Publisher A and Publisher B, and if 100 visitors visit Publisher A and 100 visitors visit Publisher B. Then suppose, that that 75 visitors click-through to the particular advertiser's website in Publisher A but only 5 visitors click-through to the advertiser's website in Publisher B. Then, it would be obvious by using simple mathematics, such as dividing one number by another, that Publisher A would rank higher than Publisher B, in placing that particular advertisement for that particular advertiser. Therefore, it would be obvious that Gupta would track and store the online activities of the users and would use this store data to determine which publisher would do better than others in placing particular advertisements.

(second Office Action, pages 4-5.)

Claim 1 recites language that describes using an inclination metric to determine the desirability of placing with an electronic publisher an advertising message for an advertiser, where the inclination metric is determined by processing information regarding the number of users that visit the advertiser and the number of users that visit the publisher. The Examiner has failed to point out where and how the combination of Gupta and Wexler suggests using the inclination metric of claim 1. As discussed above, the Examiner conceded in both Office Actions that Gupta does not disclose or suggest using an inclination metric. Wexler merely states that an accounting and statistical service (i.e., a third party) accumulates and tabulates statistical information including the number of clicks on an advertiser's banner, and provides data indicative of the effectiveness of the banner

publisher's web page as an advertising medium. (col. 2, lines 57-61.) According to Wexler, the banner is displayed on a banner publisher's web page for the purpose of enticing a user to visit the banner advertiser's web site. When the user clicks on the banner, the accounting and statistical service receives the download request signal from the user's web browser, which enables it to maintain a count of the received request signals and the banner publisher's web site address. (col. 2, lines 38-56.) This count is what is generally known as "click-through" data, which is an indication of a "referral" from one web site (e.g., banner publisher's web site) to another (e.g., banner advertiser's web site) in that a user at a first web site clicks-through to a second web site. In contrast, inclination can be thought of as "co-visits" in that it is a measure of the extent to which users that visit the advertiser's web site also visit a candidate publisher's web site, irrespective of whether one of these two web sites is visited as the result of following a link to it on a page of the other web site.

Moreover, according to the Examiner's example provided in both Office Actions, Gupta would track and store click-through data, and use the click-through data to determine which publisher would do better than others in placing particular advertisements. As discussed above, click-through data is different from inclination data. The Examiner has failed to point out where and how the teachings from Gupta and Wexler would have suggested using an inclination metric. Accordingly, the Examiner has failed to satisfy his burden with respect to claim 1.

In initially rejecting claims 2-21, the Examiner conceded in the first Office Action that "Gupta does not expressly teach generating for the candidate advertising outlet a metric that compares the number of identified users to the number of counted users and constitutes a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser." But, the Examiner went on to state, "[h]owever, as explained in claim 1, Gupta would track and store the online activities of the users and would use this store data to determine which publisher would do better than others in placing particular advertisements." (first Office Action, page 7.)

In rejecting claims 2-21, the Examiner stated in the second Office Action that:

> Gupta does not expressly teach generating for the candidate advertising outlet a metric that compares the number of identified users to the number of counted users and constitutes a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser. However, as explained in claim 1, Gupta would track and store the online activities of the users and would use this store data to determine which publisher would do better than others in placing particular advertisements, as taught by Wexler.

(second office Action, pages 5-6.)

Claims 2-21 each recite "generating for the candidate advertising outlet a metric that compares the number of identified users to the number of counted users and constitutes a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser." In the quoted portion of the claims, the "number of identified users" is a count of the users that have visited the candidate advertising outlet, and the "number of counted users" is a count of the number of identified users that have also visited the selected advertiser. Therefore, similar to claim 1, claims 2-21 each recite language that describes using an inclination metric to determine the desirability of placing with a candidate advertising outlet one or more advertising messages for the selected advertiser. The Examiner has failed to point out where and how the combination of Gupta and Wexler suggests using the inclination metric of claims 2-21. As discussed above, the Examiner conceded in both Office Actions that Gupta does not disclose or suggest using an inclination metric, and Wexler merely describes an accounting and statistical service that maintains a count of click-through data. The Examiner has failed to point out where and how the teachings from Gupta and Wexler would have suggested using an inclination metric. Accordingly, the Examiner has failed to satisfy his burden with respect to claims 2-21.

In rejecting claim 22, the Examiner stated in both Office Actions that "[c]laim 22 contains the same limitations as claims 2 therefore the same rejection is applied." (first Office Action, page 13; second Office Action, page 12.) In rejecting claim 23, the Examiner

stated in both Office Actions that "[c]laim 23 contains the same limitations as claims 2 and 7 therefore the same rejection is applied." (first Office Action, page 13; second Office Action, page 12.) In rejecting claim 24, the Examiner stated in both Office Actions that "[c]laim 24 contains the same limitations as claims 2 and 8 therefore the same rejection is applied." (first Office Action, page 13; second Office Action, page 12.)

Claims 22-24 each recite language that describes an advertising outlet inclination data structure that includes inclination information that is usable to select a candidate advertising outlet. The Examiner has failed to point out where and how the combination of Gupta and Wexler suggests the inclination information of claims 22-24. As discussed above, the Examiner conceded in both Office Actions that Gupta does not disclose or suggest using an inclination metric, and Wexler merely describes an accounting and statistical service that maintains a count of click-through data. The Examiner has failed to point out where and how the teachings from Gupta and Wexler would have suggested using inclination information. Accordingly, the Examiner has failed to satisfy his burden with respect to claims 22-24.

In rejecting claims 25-27, the Examiner stated in both Office Actions that:

> Gupta does not explicitly teach: for each of a plurality of users, storing a user identifier on a computer system used by the user, the number of stored user identifiers constituting a first quantity; when one of the plurality of users visits the distinguished electronic publisher advertiser website, receiving and storing an indication of a first type indicating that the user visited the distinguished electronic publisher website, the indication containing the user identifier stored on the computer system used by the user; when one of the plurality of users visits the website of one of the plurality of candidate electronic publishers, receiving and storing an indication of a second type indicating that the user visited the candidate electronic publisher website, the indication containing the user identifier stored on the computer system used by the user and an identifier of the candidate electronic publisher; selecting the user identifiers contained in stored indications of the first type; determining the number of unique selected user identifiers, constituting a second quantity; for each of the candidate electronic publishers, selecting stored indications of the second type that contain an identifier of the candidate electronic publisher; determining the number of unique user identifiers that are contained in at least one of the selected indications of the

> second type, constituting a third quantity; determining the number of unique user identifiers that are contained in at least one of the selected indications of the second type that are also selected, constituting a fourth quantity; dividing the product of the first and third quantities by the product of the second and fourth quantities to obtain an affinity metric for the candidate electronic publisher; analyzing the affinity metrics obtained for the candidate electronic publishers; and selecting one or more of the candidate electronic publishers on which to place an advertising message for the advertiser based upon the analysis. The Examiner answers with the same rejection apply *[sic]* to claims 1 and 2.

(first Office Action, pages 13-15; second Office Action, pages 12-14.)

Claims 25-27 each recite language that describes using an affinity metric to determine the desirability of placing with a candidate electronic publisher one or more advertising messages for a selected candidate advertiser. As explained above, affinity measures the extent to which users that visit a publisher web site on which the advertiser conducted a successful advertising campaign in the past also visit a candidate publisher web site. In rejecting claims 25-27, the Examiner stated in both Office Actions that "[t]he Examiner answers with the same rejection apply *[sic]* to claims 1 and 2." Claims 25-27 recite different features (i.e., affinity) than do claims 1 and 2 (i.e., inclination), none of which are specifically addressed by the Examiner. By applying the same reasons for rejecting claims 1 and 2 to claims 25-27, the Examiner has failed to point out where and how the teachings from Gupta and Wexler would have suggested using an affinity metric. Accordingly, the Examiner has failed to satisfy his burden with respect to claims 25-27.

In rejecting claims 28-33, the Examiner stated in both Office Actions that "[c]laim 28 contains the same limitations as claim 25 therefore the same rejection is applied." (first Office Action, page 16; second Office Action, page 15.)

Claims 28-33 each recite language that describes using an affinity metric to determine the desirability of placing with a candidate advertising outlet an advertising message for a selected advertiser. In rejecting claims 28-33, the Examiner applies the rejection of claim 25, which was rejected on the same basis as claims 1 and 2. Claims 28-33 recite different features (i.e., affinity) than do claims 1 and 2 (i.e., inclination), none of

which are specifically addressed by the Examiner. By applying the same reasons for rejecting claims 1 and 2 to claims 28-33, the Examiner has failed to point out where and how the teachings from Gupta and Wexler would have suggested using an affinity metric. Accordingly, the Examiner has failed to satisfy his burden with respect to claims 28-33.

In rejecting claim 34, the Examiner stated in both Office Actions that "[c]laim 34 contains the same limitations as claim 28 therefore the same rejection is applied." (first Office Action, page 17; second Office Action, page 16.)

Claim 34 recites language that describes an advertising outlet affinity data structure that includes affinity information that is usable to select one or more of the candidate advertising outlets. In rejecting claim 34, the Examiner applies the rejection of claim 28, which was rejected on the same basis as claims 1 and 2. Claim 34 recites different features (i.e., affinity) than do claims 1 and 2 (i.e., inclination), none of which are specifically addressed by the Examiner. By applying the same reasons for rejecting claims 1 and 2 to claim 34, the Examiner has failed to point out where and how the teachings from Gupta and Wexler would have suggested using affinity information. Accordingly, the Examiner has failed to satisfy his burden with respect to claim 34.

In rejecting claim 35, the Examiner stated in both Office Actions that "[c]laim 35 contains the same limitations as claim 25 therefore the same rejection is applied." (first Office Action, page 17; second Office Action, page 16.)

Claim 35 recites language that describes using a combination of an inclination metric and an affinity metric to select advertising outlets on which to place advertising messages for an advertiser. In rejecting claim 35, the Examiner applies the rejection of claim 25, which was rejected on the same basis as claims 1 and 2. Claim 35 recites different features (i.e., affinity) than do claims 1 and 2 (i.e., inclination), none of which are specifically addressed by the Examiner. By applying the same reasons for rejecting claims 1 and 2 to claim 35, the Examiner has failed to point out where and how the teachings from

Gupta and Wexler would have suggested using an affinity metric. Accordingly, the Examiner has failed to satisfy his burden with respect to claim 35.

In rejecting claim 36, the Examiner stated in both Office Actions that "[c]laim 36 contains the same limitations as claim 2 therefore the same rejection is applied." (first Office Action, page 17; second Office Action, page 16.) In rejecting claim 37, the Examiner stated in both Office Actions that "[c]laim 37 contains the same limitations as claims 2 and 7 therefore the same rejection is applied." (first Office Action, page 17; second Office Action, page 16.)

Claims 36 and 37 each recite language that describes using an inclination value to select advertising outlets at which to advertise on behalf of an advertiser. The Examiner has failed to point out where and how the combination of Gupta and Wexler suggests the inclination value of claims 36 and 37. As discussed above, the Examiner conceded in both Office Actions that Gupta does not disclose or suggest using an inclination metric, and Wexler merely describes an accounting and statistical service that maintains a count of click-through data. The Examiner has failed to point out where and how the teachings from Gupta and Wexler would have suggested using an inclination value. Accordingly, the Examiner has failed to satisfy his burden with respect to claims 36 and 37.

Claims 38-41 each depend from claim 2, and for the reasons discussed above, the combination of Gupta and Wexler fails to disclose or suggest all of the elements recited by claim 2. Accordingly, the Examiner has failed to satisfy his burden with respect to claims 38-41.

Claims 44-47 each depend from claim 28, and for the reasons discussed above, the combination of Gupta and Wexler fails to disclose or suggest all of the elements recited by claim 28. Accordingly, the Examiner has failed to satisfy his burden with respect to claims 44-47.

5. Gupta and Wexler Together Fail to Disclose or Suggest All of the Elements Recited by Claims 1-41 and 44-47, and are Therefore Incapable of Supporting any Proper Rejection Under 35 U.S.C. § 103(a)

Together, Gupta and Wexler fail to disclose or suggest all of the elements recited by claims 1-41 and 44-47. Claims 1-24 and 35-41 recite language that describes using inclination to select a publisher for an advertising message. As discussed above, Gupta would track and store click-through data, and use the click-through data to determine which publisher would do better than others in placing particular advertisements. Because click-through is different from inclination, Gupta fails to disclose or suggest using inclination to select a publisher for an advertising message. As discussed above, Wexler fails to disclose or suggest using inclination to select a publisher for an advertising message and, thus, fails to cure these shortcomings of Gupta. For at least this reason, Gupta and Wexler cannot render claims 1-24 and 35-41 obvious.

Claims 25-41, 35 and 44-47 recite language that describes using affinity to select a publisher for an advertising message. As discussed above, both Gupta and Wexler fail to disclose or suggest using affinity to select a publisher for an advertising message. For at least this reason, Gupta and Wexler cannot render claims 25-41, 35 and 44-47 obvious.

C. The Rejection of Claims 42, 43 and 48-51 Under 35 U.S.C. § 103(a) Over Gupta In View of Wexler and Ozer Is Improper

1. Ozer

Ozer is directed to an approach for tracking viewer behavior information of advertisements viewed on a home entertainment system. (col. 4, lines 35-37.) In Ozer, a processing device associated with the home entertainment system determines that a particular advertisement is being displayed, and in response, generates viewing behavior information that describes the viewing of the advertisement. The processing device

transports the viewing behavior information to a remote location on a periodic basis. (col. 2, lines 52-59.)

2. The Examiner Failed to Establish a *Prima Facie* Case of Obviousness

In the second Office Action, the Examiner rejected claims 42, 43 and 48-51 under 35 U.S.C. § 103(a) as being obvious over Gupta in view of Wexler and Ozer. In rejecting claim 42, the Examiner stated in the second Office Action that:

> As per claim 42, Gupta and Wexler teach: [t]he method of claim 2 but fails to teach wherein the candidate advertising outlet has a television channel, and wherein identifying a plurality of users that have visited the candidate advertising outlet comprises identifying a plurality of users that have viewed the television channel of the candidate advertising outlet. However, Ozer teaches a system that tracks users viewing behavior of advertisements displayed in television programs (see column 2, lines 46-67). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Gupta and Wexler would track the advertisements viewed by users in televisions *[sic]* programs sponsored by advertisers, as taught by Ozer. Gupta and Wexler would track the users viewing behavior and would use this information to determine which publisher would do better than others in placing particular advertisements, as taught by Wexler.

(second Office Action, pages 18-19.)

In rejecting claims 43 and 48-51 in the second Office Action, the Examiner applies the rejection of claim 42. (second Office Action, pages 19-20.)

The Examiner has failed to establish a *prima facie* case for the obviousness rejection of claims 42, 43 and 48-51 over Gupta in view of Wexler and Ozer, in that the Examiner has failed to show how the teachings from Gupta, Wexler and Ozer would have suggested the subject matter claimed in claims 42, 43 and 48-51 to a person of ordinary skill in the art.

For the reasons discussed above, the combination of Gupta and Wexler fails to disclose or suggest all of the elements recited by claim 2. Notwithstanding the details of

viewing a television channel, because claims 42 and 43 each depend from claim 2, the Examiner has failed to satisfy his burden with respect to claims 42 and 43.

For the reasons discussed above, the combination of Gupta and Wexler fails to disclose or suggest all of the elements recited by claim 28. Notwithstanding the details of viewing a television channel or television program, because claims 48-51 each depend from claim 28, the Examiner has failed to satisfy his burden with respect to claims 48-51.

3. Gupta, Wexler and Ozer Together Fail to Disclose or Suggest All of the Elements Recited by Claims 42, 43 and 48-51, and are Therefore Incapable of Supporting any Proper Rejection Under 35 U.S.C. § 103(a)

Together, Gupta, Wexler and Ozer fail to disclose or suggest all of the elements recited by claims 42, 43 and 48-51. Notwithstanding the details of viewing a television station or a television program – which the Examiner admits is not disclosed or suggested by either Gupta or Wexler – as discussed above, both Gupta and Wexler fail to disclose or suggest using inclination and/or affinity to select a publisher for an advertising message. For at least this reason, Gupta, Wexler and Ozer cannot render claims 42, 43 and 48-51 obvious.

VIII. SUMMARY

Each of claims 1-51 has been improperly rejected, both (a) in that the Examiner has failed to make a *prima facie* case of unpatentability, and (b) in that the cited references would not support any rejection of these claims. Accordingly, Appellants seek the reversal of the rejection of these claims.

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Respectfully submitted,

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 09/702,004

1. (Original) A method in a computing system for assessing, for a selected electronic advertiser having a web site and each of a plurality of electronic publishers each also having a website, a measure of the desirability of placing with the electronic publisher one or more advertising messages for the selected electronic advertiser, comprising:

for each of a plurality of users, storing a user identifier on a computer system used by the user;

when one of the plurality of users visits the electronic advertiser website, receiving and storing an indication of a first type indicating that the user visited the electronic advertiser website, the indication containing the user identifier stored on the computer system used by the user;

when one of the plurality of users visits the website of one of the plurality of electronic publishers, receiving and storing an indication of a second type indicating that the user visited the electronic publisher website, the indication containing the user identifier stored on the computer system used by the user and an identifier of the electronic publisher;

selecting the user identifiers contained in stored indications of the first type;

determining the number of unique selected user identifiers;

for each of the electronic publishers,

determining the number of selected user identifiers that are contained in at least one indication of the second type that also contains an identifier of the electronic publisher to obtain a count for the electronic publisher;

dividing the count for the electronic publisher by the number of unique selected user identifiers to obtain an inclination metric for the electronic publisher;

analyzing the inclination metrics obtained for the electronic publishers; and

selecting one or more of the electronic publishers on which to place an advertising message for the advertiser based upon the analysis.

2. (Original) A method in a computing system for assessing, for a selected advertiser and each of a plurality of candidate advertising outlets, a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser, comprising, for each of the plurality of candidate advertising outlets:

identifying a plurality of users that have visited the candidate advertising outlet;

counting the number of identified users that have also visited the selected advertiser; and

generating for the candidate advertising outlet a metric that compares the number of identified users to the number of counted users and constitutes a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser.

3. (Original) The method of claim 2 wherein the candidate advertising outlets are web publishers.

4. (Original) The method of claim 2 wherein the candidate advertising outlets are Internet publishers.

5. (Original) The method of claim 2 wherein the candidate advertising outlets are electronic publishers.

6. (Original) The method of claim 2 wherein the metric is generated by dividing the number of counted users by the number of identified users.

7. (Original) The method of claim 2 wherein the counting counts the number of identified users that (a) have also visited the selected advertiser and (b) have not viewed an advertising message for the selected advertiser,

and wherein the metric is generated by dividing the number of counted users by the number of identified users.

8. (Original) The method of claim 2 wherein the counting counts the number of identified users that have also visited the selected advertiser without first viewing an advertising message for the selected advertiser,
and wherein the metric is generated by dividing the number of counted users by the number of identified users.

9. (Original) The method of claim 2 wherein a related advertiser is related to the selected advertiser,
and wherein the counting counts the number of identified users that (a) have also visited the selected advertiser, (b) have not viewed an advertising message for the selected advertiser, and (c) have not viewed an advertising message for the related advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users.

10. (Original) The method of claim 2 wherein a related advertiser is related to the selected advertiser,
and wherein the counting counts the number of identified users that have also visited the selected advertiser without first (a) viewing an advertising message for the selected advertiser or (b) viewing an advertising message for the related advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users.

11. (Original) The method of claim 2 wherein the counting counts the number of identified users that (a) have also visited the selected advertiser and (b) have viewed an advertising message for the selected advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users.

12. (Original) The method of claim 2 wherein the counting increments the count for each identified user that (a) visited the selected advertiser and (b) has viewed an advertising message for the selected advertiser and decrements the count for each identified user that (c) visited the selected advertiser and (d) has not viewed an advertising message for the selected advertiser, and wherein the metric is generated by dividing the count by the number of identified users.

13. (Original) The method of claim 2, further comprising displaying the generated metric for each candidate advertising outlet.

14. (Original) The method of claim 2, further comprising:

analyzing the generated metrics; and

selecting a candidate advertising outlet on which to place one or more advertising messages for the selected advertiser based upon results of the analysis.

15. (Original) The method of claim 2, further comprising discerning users that have visited the candidate advertising outlets and those that have visited the selected advertiser by analyzing the contents of logs of one or more web servers that collectively receive a request when a user visits one of the candidate advertising outlets and when a user visits the selected advertiser.

16. (Original) The method of claim 2, further comprising discerning whether a user has visited the candidate advertising outlets and whether the user has visited the selected advertiser by analyzing information traffic flowing to or from the user.

17. (Original) The method of claim 16 wherein the analysis analyzes universal resource locators contained in the traffic.

18. (Original) The method of claim 16 wherein the analysis analyzes filenames contained in the traffic.

19. (Original) The method of claim 16 wherein the analysis analyzes content contained in the traffic.

20. (Original) The method of claim 16 wherein the analysis analyzes textual content contained in the traffic.

21. (Original) The method of claim 16 wherein the analysis analyzes visual content contained in the traffic.

22. (Previously Presented) One or more computer memories collectively containing an advertising outlet inclination data structure, the data structure containing information indicating, for a selected advertiser having a web page and each of a plurality of candidate advertising outlets, the fraction of visitors to the web page of the selected advertiser that also visited the candidate advertising outlet,
such that the contents of the data structure are usable to select a candidate advertising outlet on which to place an advertising message for the selected advertiser.

23. (Previously Presented) One or more computer memories collectively containing an advertising outlet inclination data structure, the data structure containing information indicating, for a selected advertiser having a web page and each of a plurality of candidate advertising outlets, the fraction of visitors to the web page of the selected advertiser that both (a) visited the candidate advertising outlet and (b) did not view an advertising message for the advertiser,
such that the contents of the data structure are usable to select a candidate advertising outlet on which to place an advertising message for the selected advertiser.

24. (Previously Presented) One or more computer memories collectively containing an advertising outlet inclination data structure, the data structure containing information indicating, for a selected advertiser having a web page and each of a plurality of candidate advertising outlets, the fraction of visitors to the web page of the selected advertiser that also visited the candidate advertising outlet before first viewing an advertising message for the advertiser,
such that the contents of the data structure are usable to select a candidate advertising outlet on which to place an advertising message for the selected advertiser.

25. (Original) A method in a computing system for assessing, for a selected electronic advertiser and each of a plurality of candidate electronic publishers each having a website, a measure of the desirability of placing with the candidate electronic publisher one or more advertising messages for the selected candidate electronic advertiser, comprising:

selecting a distinguished electronic publisher that produced favorable results when an advertising message for the selected electronic advertiser was earlier placed on the distinguished electronic publisher, the distinguished electronic publisher having a website;

for each of a plurality of users, storing a user identifier on a computer system used by the user, the number of stored user identifiers constituting a first quantity;

when one of the plurality of users visits the distinguished electronic publisher advertiser website, receiving and storing an indication of a first type indicating that the user visited the distinguished electronic publisher website, the indication containing the user identifier stored on the computer system used by the user;

when one of the plurality of users visits the website of one of the plurality of candidate electronic publishers, receiving and storing an indication of a second type indicating that the user visited the candidate electronic publisher website, the indication containing the user identifier stored on the computer system used by the user and an identifier of the candidate electronic publisher;

selecting the user identifiers contained in stored indications of the first type;

determining the number of unique selected user identifiers, constituting a second quantity;

for each of the candidate electronic publishers,

selecting stored indications of the second type that contain an identifier of the candidate electronic publisher;

determining the number of unique user identifiers that are contained in at least one of the selected indications of the second type, constituting a third quantity;

determining the number of unique user identifiers that are contained in at least one of the selected indications of the second type that are also selected, constituting a fourth quantity;

dividing the product of the first and third quantities by the product of the second and fourth quantities to obtain an affinity metric for the candidate electronic publisher;

analyzing the affinity metrics obtained for the candidate electronic publishers; and

selecting one or more of the candidate electronic publishers on which to place an advertising message for the advertiser based upon the analysis.

26. (Original) The method of claim 25 wherein candidate electronic publishers for which an affinity greater than one is obtained are selected.

27. (Original) The method of claim 25 wherein candidate electronic publishers for which an affinity greater than five is obtained are selected.

28. (Original) A method in a computing system for assessing, for a selected advertiser and each of a plurality of candidate advertising outlets, a measure of the desirability of placing with the candidate advertising outlet an advertising messages for the selected advertiser, comprising, for each of the plurality of candidate advertising outlets:

identifying a distinguished advertising outlet as likely to produce a good result when an advertising message for the selected advertiser is place on the distinguished advertising outlet;

for each of the candidate advertising outlets, measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet to obtain an affinity metric for the candidate advertising outlets; and

based upon an analysis of the affinity metrics obtained for the candidate advertising outlets, selecting one or more candidate advertising outlets on which to place an advertising message for the selected advertiser.

29. (Original) The method of claim 28, further comprising:

for each of a plurality of advertising outlets on which advertising messages for the advertiser have already been placed, generating a success metric characterizing the level of success attributable to placing an advertising message for the advertiser on the advertising outlet; and

using the generated success metrics to select one of the advertising outlets on which advertising messages for the advertiser have already been placed as the distinguished advertising outlet.

30. (Original) The method of claim 29 wherein the success metrics are generated based upon a click-through rate for advertising messages placed on the advertising outlet.

31. (Original) The method of claim 29 wherein the success metrics are generated based upon a conversion rate for advertising messages placed on the advertising outlet.

32. (Original) The method of claim 29 wherein the success metrics are generated based upon an average purchase amount for advertising messages placed on the advertising outlet.

33. (Original) The method of claim 29 wherein the success metrics are generated based upon an factor specified by the selected advertiser for advertising messages placed on the advertising outlet.

34. (Previously Presented) One or more computer memories collectively containing an advertising outlet affinity data structure relating to a selected advertiser and a selected advertising outlet on which an advertising message for the selected advertiser has been successfully placed, the data structure containing information indicating, for each of a plurality of candidate advertising outlets, the extent to which visitors to the selected advertising outlet also visited the candidate advertising outlet, such that the contents of the data structure are usable to select one or more of the candidate advertising outlet on which to place an advertising message for the selected advertiser.

35. (Original) A method in a computing system for selecting advertising outlets on which to place advertising messages for an advertiser, comprising:

for each of a first plurality of advertising outlets, assessing the rate at which visitors to the advertiser also visit the advertising outlet;

selecting an advertising outlet among the first plurality having the highest rate;

for each of a second plurality of advertising outlets, assessing the tendency of a high-performing advertising outlet to drive its visitors to the advertising outlet among the second plurality of advertising outlets; and

selecting an advertising outlet among the second plurality of advertising outlets to which the high-performing advertising outlet has the greatest tendency to drive its visitors.

36. (Original) A method in a data processing system for selecting advertising outlets at which to advertise on behalf of an advertiser comprising:

for each of a plurality of advertising outlets, determining a first number of consumers observed to visit the advertising outlet;

for each of the advertising outlets, of the number of different consumers observed to visit the advertising outlet, determining a second number of consumers that also visited the advertiser;

for each advertising outlet, dividing the second value by the first value to obtain an inclination value; and

selecting advertising outlets at which to advertise on behalf of the advertiser based on the inclination values of the advertising outlets.

37. (Original) A method in a data processing system for selecting advertising outlets at which to advertise on behalf of an advertiser comprising:

for each of a plurality of advertising outlets, determining a first number of consumers observed to visit the advertising outlet;

for each of the advertising outlets, of the number of different consumers observed to visit the advertising outlet, determining a second number of consumers that (a) also visited the advertiser, and (b) were not observed to receive an advertising message for the advertiser;

for each advertising outlet, dividing the second value by the first value to obtain an inclination value; and

selecting advertising outlets at which to advertise on behalf of the advertiser based on the inclination values of the advertising outlets.

38. (Previously Presented) The method of claim 2 wherein the candidate advertising outlet has a web site, and wherein identifying a plurality of users that have visited the candidate advertising outlet comprises identifying a plurality of users that have visited the website of the candidate advertising outlet.

39. (Previously Presented) The method of claim 2 wherein the selected advertiser has a web site, and wherein counting the number of identified users that have also visited the selected advertiser comprises identifying a plurality of users that have visited the website of the selected advertiser.

40. (Previously Presented) The method of claim 2 wherein the candidate advertising outlet has a web site comprised of pages, and wherein identifying a plurality of users that have visited the candidate advertising outlet comprises identifying a plurality of users that have visited a selected page of the website of the candidate advertising outlet.

41. (Previously Presented) The method of claim 2 wherein the selected advertiser has a web site comprised of pages, and wherein counting the number of identified users that have also visited the selected advertiser comprises identifying a plurality of users that have visited a selected page of the website of the selected advertiser.

42. (Previously Presented) The method of claim 2 wherein the candidate advertising outlet has a television channel, and wherein identifying a plurality of users that have visited the candidate advertising outlet comprises identifying a plurality of users that have viewed the television channel of the candidate advertising outlet.

43. (Previously Presented) The method of claim 2 wherein the selected advertiser has a television channel, and wherein counting the number of identified users that have also visited the selected advertiser comprises identifying a plurality of users that have viewed the television channel of the selected advertiser.

44. (Previously Presented) The method of claim 28 wherein the candidate advertising outlet has a web site, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the distinguished advertising outlet to visit the website of the candidate advertising outlet.

45. (Previously Presented) The method of claim 28 wherein the distinguished advertising outlet has a web site, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the website of the distinguished advertising outlet to visit the candidate advertising outlet.

46. (Previously Presented) The method of claim 28 wherein the candidate advertising outlet has a web site comprised of pages, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the distinguished advertising outlet to visit a selected page of the website of the candidate advertising outlet.

47. (Previously Presented) The method of claim 28 wherein the distinguished advertising outlet has a web site comprised of pages, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the website of the distinguished advertising outlet to visit a selected page of the candidate advertising outlet.

48. (Previously Presented) The method of claim 28 wherein the candidate advertising outlet has a television program, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the distinguished advertising outlet to view the television program of the candidate advertising outlet.

49. (Previously Presented) The method of claim 28 wherein the distinguished advertising outlet has a television program, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of viewers of the television program of the distinguished advertising outlet to visit the candidate advertising outlet.

50. (Previously Presented) The method of claim 28 wherein the candidate advertising outlet has a television channel, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the distinguished advertising outlet to view the television channel of the candidate advertising outlet.

51. (Previously Presented) The method of claim 28 wherein the distinguished advertising outlet has a television channel, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of viewers of the television channel of the distinguished advertising outlet to visit the candidate advertising outlet.

EVIDENCE APPENDIX

RELATED PROCEEDINGS APPENDIX